on which such an injunction issues is that citizens of a state are bound by its laws and cannot be permitted so to act as to evade or counteract their operation with the result of depriving other citizens of rights which those laws were intended to secure.[12] Thus, where a debtor and creditor are residents of one state and the creditor goes into another state to garnish credits[13] or attach chattels[14] of his debtor there which are exempt under the laws of their common domicil, he may invariably be enjoined. On the same principle, an injunction may issue restraining the creditor of an insolvent against whom bankruptcy proceedings have issued or are about to issue, from evading the insolvency laws of the state of his and his debtor's residence and securing a preference by attaching in another jurisdiction property or credits of the insolvent located there.[15] But as the equitable jurisdiction in these cases arises from an unconscionable attempt to evade the laws of the parties' common domicil, an injunction will not issue unless the plaintiff and defendant are residents of the same state.[16] In the recent case of *Federal Trust Co.* v. *Conklin* (N. J. 1916) 99 Atl. 109, the defendant, a resident of New Jersey, had attached in New York, as assignee of a New York insolvent, a fund of the plaintiff, a New Jersey corporation. The plaintiff sought an injunction, on the ground that under the laws of New Jersey it had an equitable set-off to the insolvent's claim, which the New York courts might not recognize. But the court refused to intervene, on the ground that the defendant, though personally a resident of New Jersey, was as assignee officially domiciled in New York, and the proceedings did not therefore constitute an attempt to evade the laws of New Jersey.

THE EFFECT OF FAILURE OF PRIOR GIFTS ON SUCCEEDING CONTINGENT DEVISES.—It is well established that, on any failure[1] of a particular estate unprovided for, a vested remainder expectant thereon is accelerated to take possession at once.[2] But there is more difficulty in regard to the status of a devise conditioned on a contingency. It is clear that a conditional devisee may sometimes take without the occurrence

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[12]Kelly *v.* Siefert (1897) 71 Mo. App. 143, 147; see Wyeth Mfg. Co. *v.* Lang, *supra,* at p. 151.

[13]Allen *v.* Buchanan (1892) 97 Ala. 399, 11 So. 777; Keyser *v.* Rice, *supra*; Zimmerman *v.* Franke (1886) 34 Kan. 650, 9 Pac. 747. Exemption laws, being a part of the *lex fori,* will not, except by statute, avail a debtor in proceedings brought in a foreign state. 2 Freeman, Executions, § 209.

[14]Mumper *v.* Wilson (1887) 72 Iowa, 163, 33 N. W. 449; Stewart *v.* Thomson (1895) 97 Ky. 575, 31 S. W. 133.

[15]Dehon *v.* Foster, *supra*; Hazen *v.* Lydonville Bank (1898) 70 Vt. 543, 41 Atl. 1046. But where the foreign property of the insolvent could not pass to his assignee under the laws of the jurisdiction where it was located, see 16 Columbia Law Rev. 145, such an injunction was refused. Warner *v.* Jaffrey (1884) 96 N. Y. 248.

[16]Griffith *v.* Langsdale (1890) 53 Ark. 71, 13 S. W. 733.

[1]The cause of the failure, whether incapacity or unwillingness of the particular tenant to take, is immaterial so far as the rights of subsequent devisees are concerned, as it in no way affects the condition imposed on their taking. It is important only if these further limitations fail, as determining whether the devise is void or lapsed, and consequently whether the heirs or the residuary devisees take.

[2]1 Jarman, Wills (6th ed.) 718.

of the precise contingency on which his devise is conditioned. A series of cases beginning with *Jones* v. *Westcomb*[3] has established the rule that an executory devisee will take where the unexpected contingency prevents any alternative absolute estate, even though void,[4] from vesting, accomplishing in effect the same situation as the happening of the express contingency on which the devisee was to take.[5] Thus, where a bequest was to B for life and after her death to her children, but in case they predeceased B, to X, and B never had any children, the non-existence of the children at B's death, though due to an unmentioned cause, was the situation contemplated, and X was permitted to take.[6] If the alternative estate, though void, has vested unconditionally,—as for example, if a devise is to B and his heirs and in default of issue living at B's death, to X, and B is survived by a son, the devise to B being void,—it is improper to permit the devisee over to take.[7] It seems equally clear that the subsequent vesting of such an estate must defeat the devisee,[8] but as to the temporary disposition pending such vesting, the situation is analogous to that in which an executory devisee may take, as there is for the time being no alternative

[3](1711) 1 Eq. Cas. Ab. 245. The leading cases on this subject are collected and discussed in 2 Jarman, *op. cit,* 2195 *et seq.*

[4]If the contingency occurs which makes the estate of another absolute, it excludes the devisee over from any rights by the very words of the will. That the absolute tenant cannot take will not thereafter aid the devisee over; the heir, being entitled to such void devises, stands in the place of the absolute tenant and will prevail. 2 Jarman, *op. cit.* 2199.

[5]There has been much doubt as to the real meaning of these cases. The broad dictum that the devisee will take on any failure of the particular estate, see Avelyn *v.* Ward (1749) 1 Ves. Sr. *420, though approved by Fearne, Contingent Remainders & Executory Devises (10th ed.) Vol. I, 237, seems unsupported by the cases, but the willingness of some courts to follow this rule is evidence of the tendency to sustain such a devise wherever possible. 8 Columbia Law Rev. 490. On the other hand, the test that the unexpected contingency is implied as being included by the express contingency, 2 Jarman, *op. cit.* 2198, must be broadly construed to cover such cases as Murray *v.* Jones (1813) 2 V. & B. 313, and the practical limit of this implication seems to be the accomplishment by other means than the express contingency of the same situation as the testator contemplated. It is evident in all the cases following the doctrine of Jones *v.* Westcomb, *supra,* where the devisee was permitted to take, that the situation existing, though due to an unexpected contingency, was essentially the same as that contemplated by the testator to arise on the occurrence of the express contingency; while in Doo *v.* Brabant (1792) 4 T. R. 706, and similar cases, where the devisee was barred, the contingency had occurred to vest an absolute though void estate in another, or else the situation itself was beyond the testator's contemplation. *Cf.* 30 Harvard Law Rev. 372.

[6]Tennant *v.* Heathfield (1855) 21 Beav. 255.

[7]Miller *v.* Faure (1747) 1 Ves. Sr. *85; 8 Columbia Law Rev. 490; *cf. In re* Sanders' Trusts (1866) 1 Eq. 675. The rule is equally applicable to the converse case where the executory devise over fails. If the contingency occurs which would make that executory devise absolute, the prior gift is terminated, though the executory devisee cannot take, and the heirs will be entitled. 2 Jarman, *op. cit.* 2203. The suggested distinction as to limitations intended for the benefit of the succeeding devisee which would defeat the preceding estate only if the succeeding devisee could take, see Doe d. Bloomfield *v.* Eyre (1848) 5 C. B. *713, *748 n., is unsupported by authority. Sugden, Powers (8th ed.) 513.

[8]*Cf. In re* Scott [1911] 2 Ch. 374; *In re* Willis (Ch. Div. 1916) Weekly Notes, 430; note 15, *infra.*

absolute tenant, and the executory devisee may well be permitted to take subject to divesting the estate on an adverse determination of the contingency. Thus, in the last example, if the testator should die before B, the estate would vest in X until the death of B, and then if no issue survived B, X's estate would become absolute, but if issue did survive B, X would be divested and the heirs of the testator would take. Similarly, where a remainder is to a class the members of which are to be determined on contingencies unperformed at the premature termination of the particular estate, such a remainder is accelerated and the class is determined at once.[9]

Where the outstanding condition is a contingent remainder, indestructible by the appointment of trustees to preserve it, or by statute, the technical rules of property may sometimes bar the next devisee from taking. Thus a vested remainder after the contingent remainder cannot be accelerated into possession because the vested remainder being absolute cannot be divested if the contingency occurs.[10] But where the contingent remainder is an alternative to the estate of the next devisee, the estate of the latter is not absolute and no such difficulty exists. In such a case some courts construe the estate of the next devisee as a vested remainder subject to being divested on the contingency and permit him to hold in the interim;[11] others treat it as a contingent remainder of double aspect and refuse to permit any taking till the occurrence of the contingency.[12] In still other cases this technical construction is disregarded and the intent of the testator is permitted to outweigh the condition. Thus one conditioned to take in default of an appointment takes immediately on the failure of the particular estate, though the power may subsist and later be exercised to create an alternative estate in favor of which the first estate must be divested.[13]

In the recent case of *In re Willis* (Ch. Div. 1916) Weekly Notes, 430, there was a devise in trust to A for life, remainder to his unborn son, and in default of such issue to B. A disclaimed, and the court permitted B to take the income till the birth of the contingent, remainderman.[14] The court disregarded any technical construction of B's estate as vested or contingent and permitted him to take because there was no positive bar to such action. Though the decision is expressly limited to cases involving equitable estates, it can be distinguished from cases of legal estates only by practical considerations,[15]

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[9] *In re* Crothers' Trusts [1915] 1 Ir. 53; *Re* Johnson (1893) 68 L. T. R. [N. S.] 20.

[10] *In re* Scott, *supra; cf.* Carrick *v.* Errington (1726) 2 P. Wms. *361.

[11] Parker *v.* Ross (1898) 69 N. H. 213, 45 Atl. 576; *cf.* Northern Trust Co. *v.* Wheaton (1911) 249 Ill. 606, 94 N. E. 980.

[12] *Re* Vernon (1906) 95 L. T. R. [N. S.] 48, 54; *In re* Townsend (1886) 34 Ch. D. 357.

[13] *Cf.* Crozier *v.* Crozier (1843) 3 D. & W. 353. In the case of a pecuniary legacy, the devisee who takes pending an appointment receives only the income of the legacy, the *corpus* being held in trust to protect the later appointee. *Re* Master's Trusts (1911) 103 L. T. R. [N. S.] 899; 11 Columbia Law Rev. 485; Farwell, Powers (3rd ed.) 36; see note 15, *infra.*

[14] *Cf.* D'Eyncourt *v.* Gregory (1864) 34 Beav. 36; Meek *v.* Trotter (1915) 133 Tenn. 145, 180 S. W. 176.

[15] Such considerations appear in *In re* Scott, *supra.* If the life interest to a widow fails by her election to take dower, the renounced estate is used to recompense such devisees as may be disappointed thereby, Cotton

and must be taken to stand for the proposition that an unperformed contingency will not prevent the next devisee from holding pending the occurrence of the contingency.

THE CIVIL ASPECTS OF CHAMPERTY AND MAINTENANCE.—Maintenance and champerty were criminal as well as civil wrongs at common law,[1] and were also condemned by the civil law.[2] At an early date, various exceptions to the strict rules were recognized. Thus it was not maintenance for one to support a suit in which he had an interest, even though contingent,[3] or out of charitable motives,[4] or where legal relationship, actual[5] or supposed,[6] or kinship,[7] existed between the parties.[8] The reason for the enactment of the so-called maintenance and champerty statutes[9] was the necessity of curbing the

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v. Fletcher (1914) 77 N. H. 216, 90 Atl. 510; Wakefield *v.* Wakefield (1912) 256 Ill. 296, 100 N. E. 275; *In re* Lawrence's Estate (1902) 37 Misc. 702, 76 N. Y. Supp. 653, but it seems that any surplus is distributed among the remaindermen. Meek *v.* Trotter, *supra.* If the legacy is of money, one taking subject to being divested is permitted to receive only the income, in order to protect contingent rights to the principal. *In re* Disston's Estate (1916) 25 Pa. Distr. R. 106; *cf.* note 13, *supra.* But where a remainder to a class is accelerated, the determination of that class is also accelerated, and it seems that further contingencies will be extinguished. *In re* Crothers' Trusts, *supra; Re* Johnson, *supra;* but *cf. In re* Robson [1916] 1 Ch. 116.

[1]Stat. 13 Edw. I. c. 49 (1285); Stat. 28 Edw. I, c. 11, § 1 (1300); 2 Bishop, New Criminal Law (8th ed.) §§ 122, 131. Though the courts often use the words interchangeably, maintenance, strictly speaking, is an officious intermeddling in another's suit, while champerty is maintenance plus an agreement to divide the proceeds of the suit, if successful. 4 Bl. Comm. *135; 1 Hawkins, Pleas of the Crown (8th ed.) 463.

[2]Institutes of Justinian, Book IV, Title 16, § 1.

[3]Sharp *v.* Carter (1735) 3 P. Wms. *375, *378; Thallhimer *v.* Brinckerhoff (N. Y. 1824) 3 Cow. 623; British etc. Conveyors *v.* Lamson etc. Co. [1908] 1 K. B. 1006.

[4]Rothewel *v.* Power (1431) Y. B. 9 Hen. VI, 64; Holden *v.* Thompson [1907] 2 K. B. 489.

[5]See Elborough *v.* Ayres (1870) 39 L. J. Ch. 601.

[6]See Findon *v.* Parker (1843) 11 M. & W. *675.

[7]Thallhimer *v.* Brinckerhoff, *supra*; see Graham *v.* McReynolds (1891) 90 Tenn. 673, 18 S. W. 272.

[8]The non-assignability of a chose in action was but a manifestation of the law of maintenance. Co. Litt, § 347; 2 Roll. Abr. 45, c. 40; see Gilman *v.* Jones (1889) 87 Ala. 691, 5 So. 785. So also was the rule that a deed of land in the adverse possession of another was void as to the latter, Dexter *v.* Nelson (1844) 6 Ala. 68; see Fort Wayne etc. Ry. v. Mellett (1883) 92 Ind. 535, though operative between the parties by estoppel. See Paton *v.* Robinson (1909) 81 Conn. 547, 71 Atl. 730. This rule has been abolished by statute or decision in many states, Cal. Civ. Code, § 1047; Mass. Rev. Laws, c. 127, § 6; Minn. Gen. Stat. 1913, § 6829; Doe d. Bright *v.* Stevens (1855) 6 Del. 31; Chesapeake Beach Ry. *v.* Washington etc. R. R. (1905) 199 U. S. 247, 26 Sup. Ct. 25, but is still in force in others. N. Y. Real Property Law, § 260; Smith *v.* Klay (1904) 47 Fla. 216, 36 So. 54; Galbraith *v.* Payne (1903) 12 N. D. 164, 96 N. W. 258; Powers *v.* Van Dyke (1910) 27 Okla. 27, 111 Pac. 939.

[9]See note 1, *supra.*